



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/201,475	11/30/1998	KENNETH LOUIS MILSTED	SE9-98-016	1586

23334 7590 04/25/2002

FLEIT, KAIN, GIBBONS,
GUTMAN & BONGINI, P.L.
ONE BOCA COMMERCE CENTER
551 NORTHWEST 77TH STREET, SUITE 111
BOCA RATON, FL 33487

EXAMINER

NGUYEN, NGA B

ART UNIT PAPER NUMBER

3628

DATE MAILED: 04/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/201,475

Applicant(s)

Millsted et al.

Examiner
Nga B. Nguyen

Art Unit
2164



— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on Jan 31, 2002

2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1035 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 45-78 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 45-78 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirements.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) ☒ Notice of References Cited (PTO-892)

18) ☐ Interview Summary (PTO-413) Paper No(s). _____

16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

19) ☐ Notice of Informal Patent Application (PTO-152)

17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

20) ☐ Other: _____

Art Unit: 2164

DETAILED ACTION

1. This Office Action is in response to the Amendment filed on November 31, 2001, which papers has been placed of record in the file.
2. Claims 45-78 are pending in this application.

Response to Arguments/Amendment

3. Applicant's arguments with respect to claims 45-78 have been fully considered but are moot in view of the new ground(s) of rejection.
4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 2164

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 45-78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oda, U.S. Patent No. 5,703,646 in view of Official notice taken by Examiner.

Regarding to claim 45, Oda discloses a method of determining an encoding rate for digital content, the method comprising the steps of: selecting an encoding algorithm and a bit rate and encoding a selected sample of digital content for a predetermined period of time (column 14, lines 28-38).

Oda does not disclose calculating a measured rate of encoding using the selected sample and the predetermined period of time, so as to provide an interim rate of completion for a subsequent process of encoding the content with the algorithm and the bit rate which has been selected. Official notice is taken that calculating a measured rate so as to provide an interim rate of completion for a subsequent process of encoding the content with the algorithm and the bit rate is well-known in the art. For example, when performing the defragment disk in Microsoft window, the process of defragment also provide the status of defragment an interim measurement of how far such as percent of completion, time remaining... Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the status

Art Unit: 2164

indication in the defragment process and apply in the encoding process for the purpose of providing the status of encoding process.

Regarding to claim 47, Oda does not explicitly teach storing the measured rate of encoding; and associating the measured rate of encoding with a specific encoding bit rate and a specific encoding algorithm. Official Notice is taken that storing information in a memory is well-known in the art. Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to include this feature with Oda's for the purpose of keeping the encoding rate information for future use.

Regarding to claims 46, 48-49, Oda does not explicitly teach displaying the measured rate of encoding during the encoding of the digital content includes displaying the percentage of digital content encoded as compared to the total amount of digital content to be encoded, displaying the amount of time remaining to encode the total amount of digital content to be encoded. Official Notice is taken that displaying the encoding information during the encoding of digital content is well-known in the art. Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to include this feature with Oda's for the purpose of providing the encoding information during encoding the digital content.

Claim 50-57 contains the similar limitation as claim 45-49 discussed above, therefore are rejected by the same rationale.

Claims 58-71 are system claims that parallel limitation as found in claims 45-57, therefore, are rejected by the same rationale.

Art Unit: 2164

Claims 72-78 are written in computer readable medium that parallel limitation as found in claims 45-49 and 57, therefore, are rejected by the same rationale.

Conclusion

7. Claims **45-78** are rejected.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nga B. Nguyen, whose telephone number is (703) 306-2901.

The examiner can normally be reached on Monday-Friday from 7:30 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent A. Millin, can be reached on (703)308-1065.

9. **Any response to this action should be mail to:**

Commissioner of Patents and Trademarks

c/o Technology Center 2700

Washington, D.C. 20231

or faxed to:

(703) 308-9051, (for formal communications intended for entry)

or:

(703) 308-5397 (for informal or draft communications, please label

"PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II,

Art Unit: 2164

2121 Crystal Drive, Arlington.

VA., Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703)305-3900.

Nga B. Nguyen
April 5, 2002



VINCENT MILLIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100